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U.S. Citizenship and Immigration Services

[redacted]

MAR 26 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who last entered the United States on April 29, 1992 without inspection by an immigration officer. On October 9, 1992, the applicant failed to appear for a deportation hearing and was ordered removed to Colombia. On October 3, 1994, the applicant married a United States citizen and became the beneficiary of an approved Petition for Alien Relative (EAC-96-172-50816) on July 25, 1996. On November 14, 1996, the applicant's first Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was approved on condition of valid execution of the applicant's removal order. On August 27, 1997, the applicant was removed from the United States. In 1998, the applicant and his first wife divorced. On April 8, 2001, the applicant married his current spouse, a U.S. citizen, in Australia. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his wife and their U.S. citizen children.

The director determined that the unfavorable factors in the application outweigh the favorable ones. The application was denied accordingly. Further, the director revoked the applicant's first Form I-212 approved on condition in November 1996. *See* Decisions of the Director, dated January 29, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] confused the factual background of the case. Counsel contends that CIS failed to consider the favorable factors in the case.

In support of these assertions, counsel submits an affidavit of the applicant's spouse; a copy of the marriage certificate of the applicant and his spouse; a copy of the photograph page of the U.S. passport issued to the applicant's spouse; copies of the U.S. birth certificates of the applicant's children and copies of reports addressing country conditions in Colombia.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.
>
> . . . .
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign

> contiguous territory, the Attorney General [Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the applicant's marriage to a U.S. citizen; his paternity of two U.S. citizen children and the applicant's apparent lack of a criminal history.

The record reflects that the applicant's wife is a citizen of the United States. The record further reflects that the couple married on April 8, 2001 in Australia. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). The AAO finds that the applicant had already been removed from the United States at the time of his marriage to his current spouse. Therefore, the applicant's wife had no reason to expect that the applicant would be able to obtain legal immigration status in the United States. Hardship to the applicant's wife will thus be given diminished weight.

Counsel contends that the applicant's wife is "on the verge of a mental breakdown and has been under the care of a mental health professional." *See* Memorandum in Support of Reversal of I-212 Denial. The AAO notes that the record does not substantiate this assertion with documentation from a mental health professional treating the applicant's wife.[1] Counsel asserts that the applicant's spouse has difficulty financially providing for herself and her daughters. The record establishes that the applicant's wife is gainfully employed. The record does not demonstrate that the applicant is unable to financially provide for his family from his location outside of the United States. Counsel's arguments of hardship to the applicant's wife are unpersuasive based on the record.

The unfavorable factors in the application include the applicant's illegal entry into the United States; the applicant's failure to appear for his deportation hearing; the applicant's failure to surrender for removal on January 11, 1993; the applicant's breach of $3000 bond on June 11, 1993; the applicant's removal from the United States at government expense on August 27, 1997 and the applicant's years of illegal residence in the United States. The AAO notes that residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

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[1] Counsel indicates that copies of the medical records of the applicant's wife will be submitted, however over one year has elapsed since the filing of the applicant's appeal and medical records have not been received by the AAO.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The director's denial of the Form I-212 application and revocation of the prior Form I-212 approval were thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.